



Case Number: 3307609.2018

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EMPLOYMENT TRIBUNALS

BETWEEN

Claimant

Mr B Z Mavuso

and

Respondent

The London Borough of Brent

Held at Bury St Edmund's on 5 September 2019

Representation

Claimant:

Did not attend and not represented

Respondent:

Mr P Lockley, Counsel

Employment Judge Kurrein

JUDGMENT

- 1 The Claimant's claim is struck out because it has no reasonable prospect of success.

REASONS

- 1 The Claimant presented a claim alleging unfair constructive dismissal and breach of contract on 5 June 2018. The grounds of claim were confusing and poorly, if at all, particularised.
- 2 The Respondent's response, which was lengthy and condescended to detail, was presented on 16 July 2018.
- 3 The matter has come before me at an Open Preliminary Hearing to consider the Respondent's strike out application.
- 4 The Claimant has not attended today's hearing. He did not attend the previous hearing in Watford on 3 May 2018 and suffered a costs Order in consequence. My Clerk has repeatedly telephoned him on his mobile phone. It was not answered and no opportunity was given to leave a message.
- 5 I have concluded it is in the interests of justice that the hearing proceeds in the Claimant's absence.
- 6 I have read the file, considered the documents in a bundle prepared by the Respondent and considered the Respondent's submissions set out in a useful Note. I have also had regard to the decision in Cockram v. Air Products plc [2014] IRLR 672.
- 7 Even without the application based on that authority I would have considered the Claimant's case to have little reasonable prospect of success. It follows a very well-worn path where a relatively senior employee is the subject of capability and absence procedures, is then signed off sick and resigns only

- then to complain of vague undocumented wrongdoing by their line manager and/or HR.
- 8 The added difficulty for the Claimant to overcome in his case is that he was only required by his contract to give two months notice of resignation but, apparently entirely for his own reasons, gave over five months notice.
- 9 It is the Respondent's case that the Claimant, in voluntarily working or offering to work far in excess of the contractual period he was required to, has affirmed the contract. In the normal course of such events, where an employee gives contractual notice only, the provision of S.95(1)(c) Employment Rights Act 1996 exclude the giving of contractual notice from being the affirmation of the contract it would otherwise be. *Cockram* is in my view good authority for the proposition that that may well not be the case where an employee gives more than contractual notice solely for their own benefit.
- 10 The content of the exchanges between the parties over this resignation lead me to believe that the lengthy extended period of notice was solely for the Claimant's benefit: he had some health issues, had recently lost his mother-in-law and had no job to go to.
- 11 He has not given any evidence or made any representations to counter that understanding. I think it inevitable that a like finding would be made at any full hearing. It is fatal to his claim, and it has no reasonable prospect of success.

Employment Judge Kurrein

5 September 2019

Sent to the parties and
entered in the Register on 27.09.19

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For the Tribunal